



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0200-20
2. Advertiser :	Foxtel
3. Product :	Entertainment
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	8-Jul-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification

DESCRIPTION OF ADVERTISEMENT

This series of television advertisements are promoting Fox Sports and feature the song 'Black Betty'.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

Although the song is not banned in Australia I believe it is in many USA states. The lyrics are offensive and encourage stereotypical views towards dark skinned people. I find the add offensive. In particular the yellow highlighted verses below can easily be perceived the person they have called Betty is black, is always ready for sex and has a child that is a damn thing gone wild. It encourages/perpetuates offensive racial stereotyping and is especially insensitive at this time.

I have taken issue with the use of the song Black Betty as the jingle for Foxtel's current television campaign. I despise this song and view it as being extremely derogatory toward women who are black. I am disappointed that the creators appear to lack the sensitivity and awareness that black people might find this song very offensive. Or perhaps the creators do know this and simply don't care. I do not have evidence or documentation which proves this jingle is offensive to black people. However I feel confident that if you asked 600 black people their opinion, they would likely feel as I do.



I have written to Foxtel directly and they have yet to address my concerns. Perhaps you could let them know, not everyone is enjoying their creative endeavours.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

Description of the Advertisements

From the information provided by Ad Standards, we understand that the Complaint relates to an advertisement from Foxtel's 'All in one place' campaign. The campaign was developed to drive awareness of the breadth of Foxtel's range of content – sports, movies, entertainment, drama – all in one place, and comprises several advertisements to convey this message (the Advertisements). To create continuity between the Advertisements, all Advertisements are accompanied by cuts of varying duration of Spiderbait's cover of the classic African American blues song, 'Black Betty' (the Song). Spiderbait's cover of the Song, which reached number one in the ARIA Charts in May 2004, was chosen as its pace and momentum, amplified by singer and drummer, Kram, racing a hot rod in the video clip, complimented the creative concept of the campaign, being high energy and action-packed. Please see Annexure 1 for the full lyrics of the song.

As we cannot identify from the Complaint the specific advertisement from the campaign the complainant is referring to, and the fact there are several advertisements that contain the Song, we have provided information in relation to one advertisement from the campaign as a reference. The script for this advertisement is provided in Annexure 2 and a digital copy of the advertisement is available here: <https://vimeo.com/422674876>. This advertisement celebrates the return of the NRL following its suspension due to COVID-19 and opens on a close up of Dad. As the camera slowly pulls out, we see that he is in a footy stadium with another family huddled together on tiered seating. Players run past the camera. As the camera pulls out further, the environment slowly morphs, walls float in and furniture appears. The footy in front of them has disappeared and we find ourselves in a cosy living room with a television in front of the two families. The concept underpinning this advertisement is 'your home, your stadium' and is based around Foxtel being able to turn your living room into a stadium so you don't miss out on any of the action.

The Advertisements have been scheduled for broadcast on the Foxtel platform, free-to-air, online video, Facebook, Instagram and audio versions for radio and podcast since 4 March 2020. The 26 Advertisements that have been scheduled for broadcast on free-to-air were approved by ClearAds. The ClearAds number and placement code for each is provided in Annexure 3.

The Complaint



The Complaint includes the allegation that the Advertisements are offensive due to the use of the Song. The complainant raises concerns that the Song is racist and encourages “stereotypical views towards dark skinned people”. We note that the complainant subsequently referenced the lyrics “Black Betty had a child (Bam-ba-Lam) The damn thing gone wild” and “And she’s always ready” as being offensive.

Applicable provisions of the AANA Code of Ethics

Section 2.1

Ad Standards has raised Section 2.1 of the Australian Association of National Advertisers Code of Ethics (the Code) as the applicable provision in the context of the Complaint. Section 2.1 requires that:

“Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.”

In order to submit Foxtel’s comments on compliance with Section 2.1, we consider it necessary to provide context surrounding the origin of the Song and its lyrics. The Song was popularised by African-American blues singer Lead Belly in the late 1930s but there is some conjecture as to whether its origins are in an 18th century marching cadence. The Song has been performed by a number of international artists since Lead Belly, including Ram Jam in the 1970s when it reached number 18 on the singles charts in the United States and the top ten in the UK and Australia, and Tom Jones in 2002, when it again became a top 50s hit in the UK before Spiderbait’s up tempo reworking reached number 1 on the Australian charts in 2004. That version of the Song has been used as a soundtrack in championship ice figure skating and in a number of films, including Miss Congeniality 2: Armed and Fabulous (2005) and Birds of Prey (2020).

Like most early rock music, the meaning of the lyrics has been the subject of much debate over the past 100 years with several meanings attributed to the Song, including a bottle of liquor, a whip, a penitentiary transfer wagon and a hot rod.

Given that no single meaning has been attributed to the Song, Foxtel does not consider its lyrics to contain any language that discriminates against or vilifies a person or section of the community. Referring to the AANA Code of Ethics Practice Note, “discrimination” and “vilification” refers to behaviour that is “unfair or less favourable” and “humiliates, intimidates, incites hatred, contempt or ridicule”, and it is Foxtel’s view that in no way do the Advertisements, including their accompanying music, create an overall negative impression of, nor discriminate or vilify a person or section of the community on account of race, ethnicity or nationality.

Foxtel notes Ad Standards previously dismissed a complaint made about the inclusion of the Divinyls’ song ‘I Touch Myself’ in a Berlei advertisement (case number 0492/18). Ad Standards acknowledged that while the lyrics of the song were sexualised, in the context of the images used, the words of the song were less likely to be interpreted



literally. Ad Standards noted that advertisers may use iconic songs and music to appeal to audiences, but the lyrics of such songs would not necessarily be a focus of the advertisement or be considered a direct narrative of an advertisement. Accordingly, Foxtel does not consider its use of the well-known song 'Black Betty' was inappropriate in the context of an advertisement promoting a content service. The lyrics are not the focus of the Advertisements, rather, the images of sport and drama entertainment along with the up tempo beat of the Song, are utilised to build excitement for Foxtel's content line-up.

For the above reasons, we submit that the Advertisements do not breach Section 2.1 or any other provision of the Code.

Foxtel takes the Complaint very seriously and regrets any offence caused to the complainant or anyone else.

Annexure 1 – 'Black Betty' by Spiderbait lyrics

*Whoa, Black Betty (Bam-ba-lam)
Yeah, Black Betty (Bam-ba-lam)
Black Betty had a child (Bam-ba-lam)
Damn thing gone wild (Bam-ba-lam)
She's always ready (Bam-ba-lam)
She's so rock steady (Bam-ba-lam)
Whoa, Black Betty (Bam-ba-lam)
Yeah, Black Betty (Bam-ba-lam)*

Alright!

*Whoa, Black Betty (Bam-ba-lam)
Yeah, Black Betty (Bam-ba-lam)
She really gets me high (Bam-ba-lam)
You know that's no lie (Bam-ba-lam)
She's always ready (Bam-ba-lam)
She's so rock steady (Bam-ba-lam)
Whoa, Black Betty (Bam-ba-lam)
Yeah, Black Betty (Bam-ba-lam)*

Yeah!

*Oh yeah, alright
Oh yeah, alright
Oh yeah, alright
Oh yeah!
Oh yeah!*

*Whoa, Black Betty (Bam-ba-lam)
Yeah, Black Betty (Bam-ba-lam)*



She's from Birmingham (Bam-ba-lam)
Way down in Alabam' (Bam-ba-lam)
Black Betty had a child (Bam-ba-lam)
Damn thing gone blind (Bam-ba-lam)
Whoa, Black Betty (Bam-ba-lam)
Yeah, Black Betty (Bam-ba-lam)

Oh yeah
Alright
Oh yeah!
Oh yeah
Bam-ba-lam!

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainants' concerns that the use of the song 'Black Betty' in the advertisements encourages/perpetuates offensive racial stereotyping and is extremely derogatory toward women who are black.

The Panel viewed the advertisements and noted the advertiser's response.

The Panel considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Panel noted the Practice Note to Section 2.1 provides the following definitions:

"Discrimination – unfair or less favourable treatment.
Vilification – humiliates, intimidates, incites hatred, contempt or ridicule."

The Panel noted that there are 26 versions of advertisements for this brand which include this song and that some of the advertisements feature the music only, whilst other versions feature both music and lyrics.

The Panel noted the advertiser's response that the origin and meaning of the lyrics of this song are unclear and are open to interpretation.

The Panel considered that the overall theme of the series of advertisements is the use of a high-energy song as background audio to promote the high action and entertainment nature of the product, showing a range of program and sporting content.



The Panel acknowledged that some members of the community may find the full lyrics of the song to be discriminatory towards people of African descent, however considered that the focus of the advertisement is not on the lyrics of the song, and that the song is not used in the context of race or program content that is specifically targeted to one segment of the community.

The Panel noted that its role is to consider the content of the advertisements themselves, and not the background and history of a particular song when considering whether the advertisement contains discriminatory material.

The Panel considered that the specific words of the lyrics are not clear in the series of advertisements and the use of the song as a high-energy audio backdrop did not depict people of a particular race to receive unfair or less favourable treatment and did not humiliate, intimidate, incite hatred, contempt or ridicule of a group of people on the basis of their race.

Overall the Panel considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race and determined that the advertisement did not breach Section 2.1 of the Code.

Finding that the use of this song in the advertisements did not breach Section 2.1 of the Code, the Panel dismissed the complaints.